

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

JACK VIA,

Plaintiff,

vs.

LIFE INSURANCE COMPANY OF
NORTH AMERICA,

Defendant.

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Case No. 4:19 CV **1785**

COMPLAINT

COMES NOW Plaintiff, by and through counsel, and for the cause of action, states to the Court as follows:

1. Plaintiff, Jack Via, brings this action against Defendant, Life Insurance Company of North America, pursuant to Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974, for appropriate relief under ERISA Sections 409 and 502(a)(5), to recover benefits due under the plan; and to obtain other appropriate relief as the court may deem just.
2. Plaintiff alleges that he was eligible for long term disability benefits under the plan, that he exhausted all administrative remedies available to him and was thereafter wrongfully denied long term disability benefits by the Defendant, and in doing so, Defendant violated Section 502(a)(1)(B) of ERISA.

JURISDICTION AND VENUE

3. Jurisdiction of this action is conferred upon this Court by ERISA 502(e)(1), 29 U.S.C. 1132(e)(1), which generally vests the United States district courts with exclusive jurisdiction over all actions brought under ERISA Title I. Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 52 (1987)

4. Venue of this action lies in the United States District Court for the Eastern District of Missouri, pursuant to ERISA Section 502(e)(2), 29 U.S.C. 1132(e)(2), where the breach occurred.

THE PARTIES

5. At all times material herein, Plaintiff was a resident of the state of Missouri and worked in the state of Missouri.

6. At all times material herein, Plaintiff was a participant under the plan through his employment by FedEx Freight, Inc.

7. The plan is an employee welfare benefits plan specifically covered under ERISA, 29 U.S.C. 1002(2)(A), and an employee benefit plan as defined by 29 U.S.C. 1002(3), under which plaintiff is a participant, as defined by 29 U.S.C. 1002(7)

8. At all times material herein, Life Insurance Company of North America (hereinafter referred to as “Insurance Company”) is the plan sponsor of the plan, within the meaning of ERISA, 29 U.S.C. 1002(16)(B)

9. At all times material herein, defendant was the claims administrator of the plan, making and/or participating in making all benefit decisions under the Plan.

STATEMENT OF FACTS

10. February 21, 2013, plaintiff filed a claim and was approved for long term benefits with a findings of disability as of August 3, 2012. Plaintiff received benefits from January 30, 2013 through January 30, 2014.

11. August 29, 2013, defendant determined that the plaintiff was no longer disabled as of January 30, 2014. Plaintiff timely appealed the August 2013 denial.

12. February 23, 2016, defendant issued a decision finding that the plaintiff did meet the

definition of disabled, subsequent to the definition change from own occupation to any occupation.

13. August 7, 2017, defendant issued a determination concluding that the plaintiff was no longer disabled as of July 27, 2017.

14. February 7, 2018, through counsel, plaintiff filed an appeal of the August 7, 2017 denial.

15. March 28, 2018, defendant issued a decision reaffirming the previous denial of benefits dated August 7, 2017.

16. September 29, 2018, plaintiff, through counsel, filed a timely appeal of the March 2018 denial.

17. December 20, 2018 defendant issued a final decision, again, affirming the previous denial of benefits dated August 7, 2017.

18. Plaintiff has exhausted all administrative remedies required prior to the filing of this complaint under ERISA.

19. 29 U.S.C. 1132(a)(1)(B) authorizes plaintiff to recover benefits due under the terms of the Plan, to enforce plaintiff's rights under the terms of the Plan, and/or to clarify plaintiff's right to future benefits under the terms of the Plan.

20. By denying plaintiff payment of disability benefits, the Defendant has violated and continues to violate ERISA, 29 U.S.C. 1132(a)(1)(B).

WHEREFORE, Plaintiff prays that he have and recover judgment in Plaintiff's favor and against Defendant as follows:

1. For monthly disability benefits from July 27, 2017 through the resolution of this claim;
2. For benefit reinstatement;
3. For prejudgment and post judgement interest;

4. For an award of attorney fees and costs under 29 U.S.C. 1132(g)(1) and the facts and circumstances of this case; and
5. For such other relief as the court deems just and proper.

Respectfully submitted,

Kristen N. Van Fossan

/s/ KRISTEN N. VAN FOSSAN, 63608 MO

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CERTIFICATE OF SERVICE

I hereby certify that on **6.24.19** the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system on the US Attorney.

/s/ Kristen N. Van Fossan

KRISTEN N. VAN FOSSAN, 63608 MO